

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 799 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

-----  
BASTIRAM RAMSWAROOP AHIR

Versus

STATE OF GUJARAT

-----  
Appearance:

MR JS YADAV for Petitioner

MR SP HASURKAR for Respondent No. 1, 5

NOTICE SERVED BY DS for Respondent No. 2

-----  
CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 22/07/98

ORAL JUDGEMENT

RULE.

Heard the learned Advocate for the petitioner.  
The petitioner has been dismissed from service by order dated 30.12.1995. It is alleged that on 23.9.1992, the petitioner Constable was serving in Palanpur City. He

brought a lady in the tent and misbehaved with her. The incident was reported by the co-constables. A departmental enquiry was instituted against him. The enquiry Officer, relying on the admission of the petitioner as well as the statements of the other witnesses, found the charges proved. The Disciplinary Authority awarded punishment of dismissal on the basis of the enquiry report.

2. It is contended by the learned Advocate that the Disciplinary Authority has committed error in not considering the fact that there is no independent evidence supporting the charges. It is only the departmental witnesses who were not happy with the petitioner, gave statements. It is also submitted that the Disciplinary Authority has committed error in not considering the fact that the charges cannot be proved on the basis of the alleged admission of the petitioner. It is next contended that the entire story is false and fabricated. The lady who said to have been brought in the tent has not been examined.

3. I am not impressed by any of the contentions raised by the learned Advocate for the petitioner. In fact, there is absolutely no reason not to believe the departmental witnesses. They are the most natural witnesses. The place where the incident alleged to have taken place the co-constables were also staying. The statements finds corroboration from the admission of the guilt by the petitioner. So far as non-examination of the lady is concerned, it is submitted that on a somewhat identical facts, the Supreme Court in the case of Ministry of Finance v. S B Ramesh, reported in AIR 1998 SC 853 held the allegations disproved as the lady was not examined. I have gone through the said judgment. In that case, delinquent was charged that he had a contract second marriage. The Apex Court disapproved the observation of the Tribunal that there is no moral turpitude if a man and woman are residing under the same roof and if there is no law prohibiting such residence, what transpires between them is not a concern of their employer. On facts, the Court found no evidence. In the instanta case, there is overwhelming evidence i.e. eye-witness plus admission. The case reported in 1985 (1) SLR 459 is also not of any held to the petitioner. In that case, the question was of requisite proof of "contracting second marriage". So far as the quantum of punishment is concerned, in my view, it cannot be said to be harsh or excessive.

5. in view of the aforesaid, I find no merit in this

Special Civil Application and the same is accordingly  
rejected. Rule discharged.

....  
msp.